IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9583 OF 2004

Shrikumar Co-operative Housing
Society Ltd. & anr. ..Petitioners.

Vs.

Mr.A.A.Khan & Ors. ..Respondents.

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Mr.Mohan Punglia for the Petitioner.

Mr.A.S.Desai for Respondent Nos.1 to 10.

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CORAM : DR.D.Y.CHANDRACHUD, J.

8th April, 2005.

P.C. :

1. The Shrikumar Co-operative Housing Society Limited consists of seven buildings, A to G, in which a total of 144 flats are constructed. The General body passed a resolution on 31st October, 1999 to undertake the work of external and internal repair. The Managing Committee appointed a Consulting engineer who submitted a report in March 2000. Subsequently in January 2001 a Special General Body meeting was held at which a resolution

was passed to carry out the work of repair of these seven buildings. Before the Co-operative Court, a structural engineer was appointed as Court Commissioner and he submitted a report dated 14th December, 2003 which inter alia noted that there were cracks in the slab bottoms, beam bottoms and column faces. The structural engineer opined that the structural stability will be seriously affected if the issue of corrosion is neglected over a long period of time. There is another report dated 15th December, 2003 which notes that severe distress has been observed in the flats in Building C. The dispute in the present case relates to the work of repair in Building C.

2. The Respondents are some of the flat owners in Building C who instituted in September, 2003 a dispute before the Co-operative Court for the recovery of an amount of Rs.8,18,578/- from the society on the ground that the society had not carried out the work of repair and that these flat owners should be reimbursed with the cost of repairs that were carried out by them. It appears that an application was filed by the individual owner of flat C-9 since urgent repairs were

required to be carried out to the said flat. The report dated 14th December, 2003 of the Court Commissioner noted that Flat C-9 was already taken up for repair and RCC members such as slabs, beams and columns have been extensively broken open for repairs.

3. The Co-operative Court passed an order on 4th February, 2004 on that application. Flat C-12 is situated immediately above Flat C-9 and repairs are inter alia required to be carried out to the slab between Flat C-9 and Flat C-12. The owner of Flat C-9 filed an undertaking before the Co-operative Court that he would at his cost restore the flooring of Flat C-12 to its original condition while carrying out the work of repair. The Co-operative Court directed all adjacent flat owners viz. the owners of Flats C-6, C-7, C-8 and C-12 to permit the contractor and Consulting Engineer together with the office bearers of the society to take inspection of their respective flats to carry out the work of repair including the repair of the slab of Flat C-9.

4. The matter was carried in appeal and the

Co-operative Appellate Court by its order dated 13th February, 2004 directed the Respondents herein not to interfere with the work of repair to the roof of Flat C-9. The Respondents were also restrained from obstructing the work of repair to the RCC columns which were open from the outside. A period of four weeks was fixed for carrying out the work of repair of the slab of Flat C-9. The direction in regard to the other flats stands deleted.

5. The society has moved these proceedings under Article 227. The society is aggrieved by the order of the Co-operative Appellate Court in so far as it sets aside the order of the Co-operative Court and confines the directions only in regard to the work of repair to the roof of Flat C-9 and to the RCC columns. According to the society, the work of repair of the entire building has to be carried out expeditiously and all flat owners must co-operate in that process.

6. At the hearing of this Petition, it has been agreed by counsel appearing on behalf of the Petitioner as well as by counsel for all the

Respondents that the society would forthwith take up the work of getting the slab between Flats C-9 and C-12 repaired with the help of the structural consultant. Counsel appearing for the society has also assured the Court that the society would carry out all the work of repair as may be required upon inspection of the entire building by the structural consultant who has already been appointed by the co-operative society. In the circumstances, counsel appearing for the Respondents has assured the Court that each of the flat owners would fully co-operate with the structural consultant and offer inspection of all the individual flats so that the structural consultant can determine the extent to which repairs are to be carried out in respect of the structure of the building and such repair that may be required in respect of individual flats. The society has assured the Court and undertakes before the Court that it shall carry out the entire work of repair expeditiously immediately upon the report of the structural consultant.

7. In the circumstances, there shall by consent be a direction to the effect that the structural consultant shall inspect Building C and all the

individual flats therein within a period of two weeks from today and prepare a report specifying the nature and the extent of repair work that is required to be carried out. The report of the structural consultant shall necessarily include the work of repair which is to be carried out in respect of the slab between Flats C-9 and C-12. The Petitioner has agreed and undertaken before the Court to take up the work of repair in accordance with the report of the structural consultant immediately thereafter and after obtaining necessary sanctions and permissions. The society shall take up such items of repair which the structural consultant may determine to be of an emergent nature immediately and carry out all the work of repair in accordance with the report of the structural consultant. Counsel for the Petitioner has agreed before the Court that the work of repairing the slab between Flats C-9 and C-12 and of restoring the flooring of Flat C-12 shall be taken up immediately. The Respondents have agreed to co-operate with the repair work. The petition is accordingly disposed of, since no other point or issue has been pressed on either side.